HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.21554 of 1997

Date: 19.02.2007

Between:

N. Koteswara Rao,

.... Petitioner

And

The Managing Director, APSRTC,
Musheerabad, Hyderabad and 2 others.

.... Respondents

ORDER:

The action of the third respondent in issuing the proceedings dated 13-11-1996 is impugned in this writ petition as being contrary to the decisions rendered in W.P.No.857 of 1996 and W.P.No.1611 of 1994 dated 27-11-1995.

The petitioner herein had filed W.P.No.857 of 1996 and this Court, by order dated 06-02-1996, had directed the respondents to consider the case of the petitioner for appointment under the Employees' children quota on compassionate grounds and in accordance with the priority laid down in circular No.112/87 dated 05-10-1987. In W.P.No.857 of 1996, the petitioner relied on a decision of the Division Bench of this Court in W.P.No.1611 of 1994 and batch dated 27-11-1995, wherein the Division Bench observed that the circular No.112/87 dated 05-10-1987, which provides for compassionate appointment only to employees who died in harness, was prospective in its application and with respect to those who were entitled to be considered prior thereto,

the provision in the circular dated 05-10-1987 did not apply. The respondents were directed to consider the case of the petitioner in accordance with the priority laid down in circular dated 05.10.1987. In the impugned order dated 13-11-1996, a reference is made to circular dated 05-10-1987, wherein 30% of the posts in the category of Cleaners were reserved for children of ex-employees. The said circular, however, prescribes the order of preference. The petitioner was interviewed on 26-06-1996 and on his case being reviewed, it was observed that several petitions were filed claiming similar benefits. The third respondent referred to the order of this Court in W.P.No.16580 of 1988 dated 12.9.1996, wherein the action of the APSRTC in cancelling the provision for reservation to the children of employees who retired on medical grounds and hereditary appointments in APSRTC, was upheld. It is stated that in accordance with the circular dated 05-10-1987, the petitioner stood at Sl.No.30 for the post of cleaner, that there were 30 applications pending above the petitioner waiting for appointment and that no direct recruitment was conducted in Prakasam region since 1990 in the category of Conductor/Cleaner. In the impugned order dated 13-11-1996, the petitioner was informed that his case would be considered in future as and when his turn came up in the order of preference under 30% quota prescribed in the said circular.

In the affidavit filed in support of the writ petition, the petitioner would refer to the notification dated 03-06-1997 seeking to fill up 20 vacancies and though he stood at Sl.No.30, neither his case was considered nor the persons figuring at Sl.Nos.1 to 29 were considered and on the other hand, the respondents had resorted to fill up the vacancies by direct recruitment. Petitioner would contend that in view of the order of this Court in W.P.No.857 of 1996 dated 06-02-1996, he is entitled to have his case

considered for appointment in the respondent-Corporation.

In the counter affidavit filed on behalf of the respondents, it is stated that the petitioner's father had retired on 15-09-1994 on medical grounds and that the petitioner was the first son and claimed for appointment as conductor/cleaner under Employees' children quota.

On being asked as to why the Corporation had not adhered to the statement while resorting to direct recruitment, Sri R. Manmadha Reddy, learned standing counsel for the respondent Corporation contended that a circular dated 18.2.1992 was issued pending amendment to Recruitment Regulations and that the Board vide resolution dated 20.10.1994 had resolved to cancel the provision for reservation to children of employees of the Corporation. While carryout out recruitment to the post of conductor, a circular dated 15.2.1995 was issued cancelling the 10% quota. However, the 10% quota was retained insofar as the children of employees who died in harness were being considered in all deserving cases. It is stated that even under the circular dated 5.10.1987, only 30% vacancies were reserved for employees children in the order of preference specified in the said circular and that the said 30% quota will be filled whenever direct recruitment to the post of Cleaners is taken up. It is contended that the petitioner was at Sl.No.31 out of 80 pending applications for the post of Cleaner and since no recruitment took place from the year 1990 in Prakasam Region, as there were no vacancies, there was no occasion for filling up the posts of employees children. A reference was also made to the order in **Shaik Ahmed Ali Shah Vs DVM, APSRTC, Kakinada**[1] wherein it was held that the circular dated 5.10.1987 was unconstitutional and violative of

Article 16 (2) of the Constitution of India and as a result, 30% vacancies reserved for employees children was subsequently abolished. Except for children of deceased employees, who are entitled for appointment on compassionate grounds, the reservation provided for in favour of children of employees, who retired on medical grounds has been held to be *ultra vires* Article 16(2) on the ground of descent. Since the very prescription of a quota for children of employees, who retired on medical grounds, has been held to be *ultra vires* part-III of the Constitution of India, no right accrues in favour of the petitioner to claim appointment on the ground that he is the son of a employee of the APSRTC who retired on medical grounds.

The writ petition fails and is accordingly dismissed. No costs.

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RAMESH RANGANATHAN, J

Date: 19th February 2007

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[1] 1996(3) ALT 994